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Support for Victims of Crime: Reality or Rhetoric?

A dissertation submitted to the Dublin Institute of Technology in part fulfilment of the requirements for award of Masters in Criminology

By

Jennifer Rice

September 2012

Supervisor: Dr. Kevin Lalor

Department of Social Sciences, Dublin Institute of Technology.

DECLARATION

I hereby certify that the material which is submitted in this dissertation towards the award of the **Masters in Criminology** is entirely my own work and has not been submitted for any academic assessment other than part-fulfilment of the award named above.

Signature of candidate:

Date:

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ABSTRACT

The criminal justice system has drawn the victim of crime from the background to become a major actor in the criminal justice process. Over the last two decades, a considerable number of Irish policies have been drafted to meet the needs of the victim of crime. Whilst Ireland has followed the same path as a number of other jurisdictions such as the UK, it is interesting to consider why particular policies have been enacted. Is the victim of crime being used as a pawn in political game play? Or, are politicians genuinely addressing the needs of Irish victims of crime? This qualitative, non - reactive research examines three policies to uncover the influences on the development of victim policies in Ireland. These are the Criminal Law (Rape) (Amendment) Act 1990, the Criminal Justice Act 1993 and the Justice for Victims Initiative 2008. Whilst any number of policies could have been examined, the enactment of each of these policies was extremely noteworthy. The Criminal Law (Rape) (Amendment) Act 1990 amended the Criminal Law (Rape) Act 1981 following a campaign spear-headed by the Dublin Rape Crisis Centre. The Criminal Justice Act 1993, which may be seen as watershed legislation for victims of crime in Ireland, was enacted following a period of mass public outcry, invoked by the case of Lavinia Kerwick. Fianna Fáil's Justice for Victims Initiative 2008 was introduced at a time when rival Fine Gael's Victims' Rights Bill 2008 was about to be voted on in the Oireachtas. This research used document and content analysis to determine three themes of influence common to each of the policies examined. First, the power of the media was evident in each of the policies. Media coverage of particular cases and campaigns by advocacy groups pushed the victim of crime to the forefront of public attention. Second, advocacy and support groups were pivotal, either by directly driving a campaign forward, or by expressing their views regarding prospective policy changes. Finally, it was found that Government actions can influence the development of victim policies by, for example, the refusal to pass substantial legislation drafted by opposition parties.

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LIST OF ABBREVIATIONS

NESC	National Economic and Social Council
TD	Teachta Dála (member of Dáil Éireann)
UK	United Kingdom
US	United States of America

1. INTRODUCTION

According to Rogan (2006a), interest in the needs of victims of crime is a relatively new phenomenon. McGovern (2002) argues that prior to the development of victim centred policies there was an imbalance in the Irish criminal process. The focus on the alleged offender within the criminal justice system had pushed the victim to the sidelines (McGovern, 2002). According to Bacik, Heffernan, Brazil and Woods (2007) an increasing awareness led to victim support organisations being established, new legislation being introduced and a more victim focused approach to criminal justice reforms. Since the 1970s, victims of crime have attracted increasing political and professional attention (McGovern, 2002). This development, in the Irish criminal justice system, mirrored those in other common law jurisdictions such as the UK. This research aims to discover the reasons why Irish policies relating to victims of crime have developed in the way that they have. The goal is to unearth the networks and relationships that evolve in the policy community as recommended by Ismaili (2006). According to Ismaili (2006) the knowledge among criminologists on the criminal justice policy - making process has not yet fully evolved. He argues that in order to fully understand this process, researchers must first have a comprehension of the actors involved, for example the government, advocacy groups and the media. The Dublin Rape Crisis Centre was an early example of a victim support and advocacy group. It was set up in 1979 to support victims of sexual crimes. Victim Support, founded in 1985, was the first organisation of its kind, but has since closed. As McGovern (2002) states this organisation started out with basically no funding but developed into a huge operation. By 2002 it had 500 volunteers working in 40 centres across Ireland. As per McGovern (2002), Victim Support offered court service, support for relatives of murder victims, tourist support and a confidential, non - judgemental listening service for those in need. Since the collapse of Victim Support, the Commission for the Support of Victims of Crime, operating under the guidance of the Department of Justice and Equality, provides funding to victim support groups. It has been in operation since 2005.

In the last two decades, the Irish Government has introduced a significant number of policies, both legislative and non - legislative, to improve the situation of victims of crime. They include;

Criminal Law (Rape) (Amendment) Act 1990,

Criminal Justice Act 1993,

Domestic Violence Act 1996,
Victims' Charter 1999,
Sex Offenders Act 2001,
Justice for Victims Initiative 2008,
Criminal Procedure Act 2010.

1.1 Aims of the research

The aim of this research is to examine the development of victim policies in recent years. The main research question is-

What are the influences on the development of policies relating to victims of crime in Ireland?

While much of the existing literature has explored the rise of the importance of the victim and the development of victim services, there is not much literature asking *why*. Why have particular policies been enacted in Ireland? It is important to take stock of the trajectory of victims' policies and consider if they are going in the right direction. This research aims to fill this gap in the literature by considering important issues around Irish criminal justice policy. Are victims' of crime in Ireland being used as a political tool to gain society's approval? Are Irish politicians isolating the needs and rights of victims and championing appropriate policies? Or, is it victims themselves, the lobbying efforts of victim advocate groups and media campaigns which are highlighting the plight of Irish victims of crime?

1.2 Conceptual Framework

Critical victimology has been focused on developing an understanding of the relationship between epistemology, methodology and the political agenda (Walklate 1989, 1990; Mawby & Walklate, 1994). Critical victimology is a conceptual framework that examines the wider social context in modern industrial societies, and the perceptions of, and, responses to victims of crime (Marsh, 2004). This framework is best suited to this research as it is focused around three central concepts – rights, citizenship and the role of the State. From Mawby and

Walklate (1994), Newburn (2007) argues that critical victimology is based on the notion that victims' rights should be the central basis for future policy making. This foundation should move policy away from viewing the victim as simply the recipient of services. Newburn (2007) suggests that this feeds into a particular conception of citizenship. That is, one which is based on rights of the citizen rather than the civic and social responsibilities of the citizen. Finally, Newburn (2007) states that critical victimology requires recognition of the ideological role that the State plays in making victim policies. This view of victimology includes forms of victimisation which go 'unseen' like domestic violence, and recognises that the impact of criminal victimisation can be influenced by factors such as age, sex and race (Walklate, 2009). This distinguishes the framework from more positivist approaches which tend to only look at the more conventional notions of crime and victimisation like burglary (Walklate, 2009). Proponents have been criticised, however, for the lack of clarity on how to conduct empirical research within this conceptual framework (Spalek, 2006).

A second important conceptual framework underlying this study is Goode and Ben -Yehuda's (2009) constructionist approach. Under this approach a social problem exists when a number of conditions are met. Initially a group in society must see a given condition or situation as wrong. The group then become concerned about it and find it socially or politically worrying. They then encourage others or themselves to take action to correct this condition or situation. So, a condition becomes a social problem when a collective employs 'claim-making' activities with regard to that particular condition (Goode & Ben – Yehuda, 2009). In this way a social problem exists not only when a considerable group in society see something as wrong, but there must also be a solution to this condition or situation (Goode & Ben – Yehuda, 2009). An example of this would be the 'reclaim the night' march in 1978. This march was organised by a group of feminists who went on to establish the Dublin Rape Crisis Centre (McKay, 2005). This march, the 'claim-making' activity, was in protest of rape, the social problem as perceived by this group.

1.3 Summary

This research begins with a review of the literature in Chapter two. The term 'victim of crime' is defined, followed by a review of criminal policy formation in Ireland. Advocacy groups are also examined in this chapter, in both an Irish context and with reference to other jurisdictions. This is followed by a review of the role of the media in the criminal justice

system. This chapter closes with an examination of the debate surrounding the greater inclusion of the victim in the criminal justice process, via increased procedural rights. This is an important consideration as victim policies in Ireland have increased both the service rights and procedural rights to victims of crime. It is necessary to distinguish between service rights and procedural rights. Service rights are designed to provide the victim with the support to deal with the emotional or financial impact of crime and include things like compensation. Procedural rights provide the victim with the opportunity to become more involved in the criminal justice process. According to Sanders, Young and Burton (2010), procedural rights include things like victim impact statements and have become quite controversial.

Chapter three describes the methodology used to carry out this research. The research adopted a qualitative approach to discover the influences on the development of policies relating to victims of crime in Ireland. The methods of document analysis and content analysis are outlined, along with the research design. The ethics of this research are also considered in this chapter. The limitations of the research and the efforts adopted to overcome them are also described.

The findings of this research and the analysis of these findings are presented in Chapter four. They are taken together in a single chapter to provide a more understandable overview of the results. The researcher found that the main influences on victim policy - making in Ireland were Government ideologies, the role of the media and advocacy and support groups. This is followed by the final chapter which, after the analysis, presents a discussion by grouping the findings into themes.

2. LITERATURE REVIEW

Academics, such as Williams (2005), have previously questioned the authenticity of political interest in victims of crime. This study will go further and explore if the policy process has indeed reflected the needs of victims of crime, or, if it has simply been the result of the implementation of reactionary policies. The first section of this literature review will define 'victim of crime'. The second section looks at how crime victim legislation and policy is formed in Ireland. Next, the composition and contribution of victim advocacy and support groups is considered. Broadly speaking, the literature here looks at the different methods these groups use to achieve their goals and how they can influence the policy process. The fourth section considers the media. The media can be pivotal in bringing certain victim issues to political attention. This is a vital consideration when examining how and why certain victim policies have come to the fore whilst others have been left behind. Finally, the debate on the positives and negatives of increased procedural rights for the victim of crime will be examined.

2.1 Defining 'victims of crime'

The term 'victim' can hold meanings which go beyond the scope of criminology. As Karmen (2009) notes the distinguishing feature is that victims of crime have been injured by an illegal act. A victim of crime can be an individual who experiences victimisation directly, but victimisation can also have a secondary impact. A victim of crime in this instance may be, for example, a family member. For the purposes of this dissertation the term 'victim' will equate with 'victim of crime'. The United Nations put forward a comprehensive definition of 'victim of crime' in 1985. Under Article 1, of the United Nations *'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power'*, 'victims of crime' are any persons

'who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws.'

Article 2 states:

'a person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have

suffered harm in intervening to assist victims in distress or to prevent victimization’. (United Nations, 1985).

In the Irish context, a quite substantive definition was presented in Fine Gael’s failed Victims’ Rights Bill (2008). Under this Bill a victim of crime is defined as:

*‘(i) every complainant in relation to a crime or offence , and
(ii) every person who, through or by means of a crime or offence committed by another person, suffers—
(I) physical or psychological injury or emotional harm, or
(II) economic loss, including loss of, or damage to, property, and
(III) if a crime or offence committed by a person results in another person’s death or in another person being in a state of continuing unconsciousness or suffering serious intellectual disability, every member of the immediate family of the other person’* (Fine Gael, 2008, p. 10).

Most recently a definition has been offered by a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime. Under Article 2 of this Directive a ‘victim of crime’ is

*‘(i) a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss directly caused by a criminal offence;
(ii) the family members of a person whose death has been caused by a criminal offence;’* (European Commission, 2011a, p. 18).

In December 2011, the updated annex of the European Directive lays out a number of amendments to the original proposal. In this annex the Council of the European Union states that a person should be considered a victim of crime whether or not an offender is identified and prosecuted. This person should also be considered a victim of crime regardless of their relationship with the offender (European Commission, 2011b, p. 6).

2.2 The Government and the victim policy - making process

According to Birkland (2010) policies can take many different forms such as laws, regulations, court rulings and statutes. The criminal justice policy making process in Ireland is described below. The aim is to understand how and why particular policies relating to victims of crime have emerged.

The Irish Government employ a number of methods to introduce policies. Legislation can take the form of Acts introduced in the Dáil. Social policy strategies can also make their way

into the public arena in the form of non - legislative strategic papers. A recent example can be seen with the Fine Gael - Labour Government, elected in 2011. This Government stated that they will enact legislation which will place victims of crime at the very core of the criminal justice process. This was stated in their revised *Programme for Government* under the section entitled *Justice and Law Reform* (Department of the Taoiseach, 2011a). Social partnership has also been adopted as a method of developing strategies to meet social challenges which arise in Ireland. The four “pillars”, or social partners, of Irish society are the trade union pillar, the business and employer pillar, the farming pillar and the community and voluntary pillar. The Government and the four social partners successfully negotiated the current strategic framework *Towards 2016* (Department of the Taoiseach, 2011b). Along with social partnership, the Social Policy Unit exists to advise the Taoiseach on matters of social policy. In conjunction with this unit the National Economic and Social Development Office and the National Economic and Social Council (NESC) function to advise the Taoiseach on the development of social matters and the achievement of social justice. NESC also operates as a medium for discussions between the Government and the social partners (Department of the Taoiseach, 2011c).

According to Sebba (2001), the last two-decades have seen, not only the rise of the victim of crime as a considerable actor in the criminal justice process, but also a considerable body of research on the topic. The victims’ movement has followed similar trajectories in a number of jurisdictions like Ireland and the UK. McGovern (2002) wrote that despite a variance in legal systems and philosophies among them, European countries have all shown increasing political and professional interest in victims of crime since the early 1970s. On an international scale, symposia on victimology have been conducted in cities such as Jerusalem, Tokyo, Zagreb and Amsterdam since the 1970s (Schneider, 2001). Writing of the UK context, Newburn (2007) suggests crime has become a staple of political communications and electoral politics. Politicians’ concern with how they are perceived has heavily influenced policy - making and research (Newburn, 2007). The ‘victim movement’ now has significant political influence in the UK (Sanders *et al.*, 2010, p. 726). Election campaigns involve competition between parties to gain the fabled ‘victims vote’ (Sanders *et al.*, 2010, p. 726). The writings of Sanders *et al.* and Newburn are mirrored in the Irish context. In 2007, Kerrigan wrote that, particularly around election time, there are no greater beneficiaries of crime than politicians. Crime becomes a superior platform from where to launch a campaign. It is simple, emotive and ‘stirs the blood’ (Kerrigan, 2007, April 8, para. 17). Writing from Jerusalem, Sebba (2001) argues that a lot of criminological research is conducted with the

assumption that the results can influence policy - making. This can be particularly true when the government is the source of research funds. It is the work of the criminologist to supply the information. From a UK perspective, Knepper (2007) writes that it is up to the policy-maker what to do with this information. However, Knepper (2007, p. 10) also argues that criminologists are often concerned with the gap between research and what policy-makers actually do. On a similar note, Sebba (2001) argues that the influence of empirical research on policy development in the area of victims' of crime is marginal. According to Sebba (2001) more dominant influences are pressures often exerted by advocacy groups and personalities and ideologies within the government. Sebba (2001) also argues that research findings may be seen as a function of the interests and ideologies of those who provide funding.

2.3 The influence of advocacy

From a US perspective, Ismaili (2006) argues that the influence of interest groups is a vital consideration as these groups have become substantial actors in the policy - making process. Heywood (2002) defines an interest group as '*an organized association that aims to influence the policies or actions of government*' (Heywood, 2002, p. 272). An expansion of this definition is offered by Chari and Kritzing. They define an interest/lobby/advocacy group as '*any group, or set of actors, that has common interests and seeks to influence the policy - making process in such a way that their interests are reflected in public policy outcomes*' (Chari & Kritzing, 2006, p. 30 as cited in Murphy, 2010, p. 328). Vaughan and Kilcommins (2010) argue that contemporary societies reflect a more complex form of democracy where the many voices of interest groups challenge the power of the elected government.

This pursuit of goals by interest groups can also be seen in a number of jurisdictions. In her examination of interest groups in the US, Stolz (2002) found that the operations of interest groups differ in three ways. The first difference was that interest groups vary with respect to their goals, for example material goals like money or altruistic goals such as the advancement of a cause. Second, interest groups vary in the resources at their disposal, for example financial resources expertise/information, membership (for example some pivotal character adding legitimacy) or political skills. Finally, interest groups can also vary in how they take part in the policy making process, for example providing draft legislation to politicians, meeting and advising officials, communicating with public officials through letter writing

campaigns or public demonstrations. In a similar vein, writing in the UK, Savage, Grieve and Poyser (2007) demonstrate the importance of social resources and power to a successful campaign. They argue that the critical success factors in justice campaigns fall into two essential categories. The first is ‘campaigning networks’. Campaign organisations, the media and campaigning lawyers represent the primary social networks for exploitation. The second category is ‘victims and families’, the backbone of any successful justice campaign (Savage *et al.*, 2007). These authors see this category as the critical factor in justice and lobbying campaigns. Savage *et al.* (2007) argue that it is the resilience of victims and their families which becomes the driving force behind many campaigns. This category become the ‘critical stakeholders’ thrusting campaigns forward with a level of commitment that provides the ‘glue’ to hold a campaign together (Savage *et al.*, 2007).

Murphy (2010) argues that interest groups have been major players in the Irish policy process since the 1970s. The sheer number of interest groups in operation in Ireland today is indicative of their important role in Irish society (Murphy, 2010). For example, the number of victim advocacy groups that receive funding from the Commission for the Support of Victims of Crime has risen from 28 in 2005 (Commission for the Support of Victims of Crime, 2009) to 46 in 2011 (Commission for the Support of Victims of Crime, 2011). Murphy (2010) divides interest groups in Ireland into two broad categories. First are those with a *sectional base* like trade unions. The second category is labelled *cause-centred groups*; these are the primary concern of this dissertation.

Murphy (2010) argues that cause – centred groups in Ireland have used a number of methods over the years to in their attempts to influence policy. The Rape Crisis Movement is especially notable in stimulating interest and concern for the rights of victims (Rogan, 2006a). In October 1978, 5,000 women from all over Ireland gathered to protest against rape and violence against women (McKay, 2005). The Rape Crisis Centre has remained an important lobbying body for changes to the status of Irish women (Murphy, 2010). The Rape Crisis Centre lobbied unrelentingly between 1981 and 1990 in its crusade to reform the Criminal Law (Rape) Act 1981. This culminated in the enactment of the Criminal Law (Rape) (Amendment) Act 1990 (Murphy, 2010). The Irish Council for Civil Liberties, founded in 1976, also made significant contributions to this campaign. O’Brien (2006) notes how a 1983 publication by the organisation – *Women’s Rights in Ireland* – set much of the legislative agenda for women’s rights. In essence, campaigns by the the Rape Crisis Centre and the Irish Council for Civil Liberties brought attention to crimes which had no legislative

existence, for example, rape within marriage. As described by Stolz (2005) these two groups contributed to setting the criminal justice policy agenda by defining a new crime. According to Newburn (2003) an important lesson has been that certain forms of victimisation may never have come to light if not for the campaigning work of advocacy groups.

2.4 The role of the media

The media has been central in increasing interest in the victim. As Kerrigan sensationally wrote in 2007, ‘nothing sells a newspaper like a good, juicy murder’ (para. 12). Kuypers (2002) considers the ‘agenda – setting’ and ‘agenda – extension’ functions of the media. Kuypers (2002) argues that the media are especially influential in telling the general population what to think about (agenda – setting). Often, the longer an issue remains in the media lens, the more it is perceived as a crisis (Kuypers, 2002). Agenda – extension occurs when the media shifts gear and tells the public *how* to think about a particular issue. In high profile and emotive cases the victim or the families of victims are often placed at the centre of media attention (Rogan, 2006a; Dignan, 2005). As Dignan (2005) notes, the media often provide the victim or their families with a platform from which to bring about criminal justice reforms. In this way the media also provides a way for a lobby group to get their message across on a wider scale. This can also influence governments to respond to campaigns which may have previously gone unnoticed. For example, in Ireland, Lavinia Kerwick, a rape victim gave up her anonymity in 1992 giving interviews to radio, television and newspapers. Her case intertwined with the campaigning efforts of the Dublin Rape Crisis Centre. The Dublin Rape Crisis Centre stated that they received a massive surge in calls after Ms. Kerwick spoke out (McKay, 2005). There were lobby groups in Kilkenny and women protesting outside the Four Courts (McKay, 2005). As a result of Ms. Kerwick’s case and the widespread media attention and lobbying efforts which went along with it, a Bill was introduced to the Oireachtas which eventually became the Criminal Justice Act 1993.

David, Rohloff, Petley and Hughes (2011) argue that the ‘public opinion’ invoked by newspapers was that opinion which governments were most likely to respond to. According to Kuypers (2002) the way in which the media frame an issue affects the way the public understand this issue. This result is strongest when new information is being injected into the public stream such as new public policy initiatives (Kuypers, 2002). Some arguments have suggested that the media fixation particularly on more vulnerable victims of crime heightens

fear of crime resulting in increased public demand for greater punitiveness (Jewkes, 2010). The Quarterly National Household Survey revealed that 83% of respondents thought crime was a serious problem in Ireland in 2010 (Central Statistics Office, 2010, p. 1). Coulter (2008, July 7) notes that high profile Irish crimes in the 1990s such as the murders of Garda Jerry McCabe and journalist Veronica Guerin triggered a tougher political attitude to crime which appeared to be simultaneously steered by and played out in the media. The power of the media can thus be seen in the selection of issues which are considered 'newsworthy' (Savage *et al.*, 2007). In the *White Paper on Crime*, Ireland's Department of Justice and Equality acknowledged that high profile and disturbing events often gain the most media coverage (White Paper on Crime Unit, 2011, pg. 7). Coulter (2008, July 7) notes that as headlines must carry a limited number of words, and television reports must be simplified and concise; it is often images that have the most public impact. As a result, it is often those cases where the victim is a young photogenic woman that draws the most media, and therefore public attention (Coulter, 2008, July 7). She also asks how helpful it really is for a victim of crime to become a celebrity in the media (Coulter, 2008, July 7). In line with this, Coen (2006) argues that both politicians and the media have, concurrently, exploited the increasing exposure of the victim to satisfy society's demand for instant gratification. Society's desire for a 'quick fix' has led to politicians responding more quickly to those crimes which gain the most media attention (Coen, 2006). A pertinent example of media power is Sarah's Law. This effectively is the Child Sex Offender Disclosure Scheme which has recently been expanded by the Government in the United Kingdom (Directgov, 2012). The campaign for Sarah's Law was driven by the News of the World in 2000 in the aftermath of the murder of Sarah Payne. A warning comes from Kay (2012, August 1) who wrote that as media reportage defines our frame of reference (para. 12) it can be unwise for governments to draft legislation on the basis of emotive pictures and disturbing events (para. 2).

2.5 Service rights Vs procedural rights

Irish Legislation and policies in recent years relating to victims of crime has offered a number of developments to victims' services. For example, the introduction of the victim impact statement can be seen as one of the most significant, and at times controversial, developments. Policy developments in Ireland, like the victim impact statement, may be deemed as an achievement of a goal by some groups whilst, at the same time, be less

significant to other groups. As per Englebrecht (2011) victim advocates are not a homogenous group. There are distinct groups that endeavour to improve the services available to the victim, such as compensation or access to information. There are also groups who are more concerned with increasing the involvement of the victim in the criminal process, and so lobby for increased procedural rights. The particular ideologies of the prevailing government can also influence what policies are enacted. In the main, victim policies enacted in Ireland have moved toward the increased inclusion of the victim in the criminal justice process. But is this how services to victims can be improved? This section examines the debate in order to establish an understanding of why certain victim policies are developed and others are not.

From a UK perspective, Bottoms (2010) argues in favour of increased procedural rights. At the trial stage Bottoms sees the role of the victim as that of a witness. While individualised sentencing is not encouraged Bottoms (2010) believes that, particularly for more serious cases, the court must receive information so as to maximise the understanding before sentencing. The argument here is that it is the duty of the court to understand within a State-led dispute resolution process. Bottoms (2010) states that at the sentencing stage the court may need to hear personalised descriptive information from the witness. In line with this Erez (1999) argues that with the correct protections the overall experience of providing input can be positive and healing, helping victims to cope with the experience of victimisation and the criminal justice process.

In an Irish context, Coffey (2006) lays out a number of reasons against the greater inclusion of the victim in the criminal process. First, the criminal justice system is founded on the notion of impartiality. This means that the judiciary and the jury must be unbiased in order to ensure a fair trial of the accused. Article 6.1 of the European Convention on Human Rights and Article 38 of Bunreacht na hÉireann both guarantee the right to a fair and impartial trial. In line with this Coen (2006) argues that the introduction of the victim impact statement is symbolic of a substitution of emotionalism in the place of impartiality. Secondly, Coffey (2006) argues that the impact of crime on victims will differ depending on their various levels of toughness and support systems available to them. Writing in the UK, Ashworth (1993) also develops this point. He questions whether it is right that one offender receives a more severe sentence because his/her victim suffered serious after-effects whilst another offender receives a lesser sentence because his/her victim made a quick recovery. A further objection outlined by Coffey (2006) is raised along constitutional lines. What if victim participation in

the criminal process increased to the point of assuming the form of a tripartite prosecution model whereby the offender faced two prosecuting authorities in the form of the State and the victim?

Rogan (2006b) adds that the greater involvement of the victim of crime does present some difficulty. She argues that equality and proportionality in punishment could not be upheld if justice was to be distributed on an individual basis and that, in theory, the State is best placed to dispense fair and equitable justice (Rogan, 2006b). She also alludes to the use of victim rights as a political tool (Rogan, 2006b). In line with this, Sanders *et al.* (2010, p. 743) argue that in the UK, while service rights are more highly valued by victims, procedural rights grab more headlines. This is reflected in the Irish context. Coen (2006) maintains that victim advocacy contributes more to the politicisation of the penal process than it does to the plight of the victim, while Rogan (2006b) further states that it is vital that the vindication of victims' rights moves from the politicisation of criminal justice issues into real and substantial change.

This research aims to explore how and why Irish policies regarding victims of crime have been developed. The researcher aims to make this exploration by building on the literature which has been discussed above to uncover how the Irish policy process has been influenced. This research will be carried out with particular reference to three policies, both legislative and non - legislative. These are the Criminal Law (Rape) (Amendment) Act 1990, the Criminal Justice Act 1993 and the Justice for Victims Initiative in 2008. These particular policies have been selected due to their significance in relation to victims of crime. The research will seek out the particular influences on the Irish Government during the development of these policies, in order to establish if political developments have been authentic reflecting the needs of victims of crime, or, if in fact, they have merely been political rhetoric. The next chapter will detail the methodology used to achieve this.

3. METHODOLOGY

This research studies the influences on the development of policies relating to victims of crime in Ireland. In order to answer the question posed the research was non - reactive, in that the subjects being studied were unaware (Neuman, 2011). The research adopted a qualitative approach. The intention was to develop a number of themes in order to carry out a thematic analysis. It was expected that these themes would reflect those found in the literature review. They are the ideologies and actions of the prevailing government, the role of victim advocacy and support groups, and, media influence. Travis (1983) notes how qualitative research has allowed for a greater understanding of the criminal justice process and agencies involved in the process. As maintained by Travis (1983) the qualitative method is distinctively appropriate to the study of policy development. This shows that the qualitative method was most suited to this study. A flexible design was adopted so that concepts could evolve freely as the research progressed (Davies, Francis & Jupp, 2011). Three policies were selected for this research. These policies were selected on the basis of a preliminary scanning for information. It was thought that information surrounding these policies was the most readily accessible. The researcher felt that a greater body of information would allow for a more thorough analysis leading to more comprehensive results. Also, each of the policies selected were enacted under noteworthy circumstances. The policies chosen were;

Criminal Law (Rape) (Amendment) Act 1990,

Criminal Justice Act 1993,

and the Justice for Victims Initiative 2008.

3.1 Document analysis

Documentary analysis offers a wealth of readily available information. As per Bowen (2009) documents are suitable for repeated review. There is no time limit such as that of an interview. Documents can provide an effective means to trace change and development (Bowen, 2009). Documents also can provide broad coverage of many events occurring over a period of time (Yin, 1994, cited in Bowen, 2009). Considering the historical nature of this research the most appropriate method of data collection and analysis was document analysis. As per Merriam (1988 cited in Bowen, 2009), for retrospective research, relying on prior data

may be the only realistic approach. For these reasons the key method adopted for this study was secondary data analysis. *'A secondary source refers to any existing source of information which has been collected by someone other than the researcher and with some purpose other than the current research question'* (Davies *et al.*, 2011, p. 100). The researcher also contacted the Irish Council for Civil Liberties on July 1st 2012 and the office of Minister for Justice, Alan Shatter, on July 9th 2012 with regard to advice and assistance on relevant documents.

The secondary sources utilised are discussed below.

Academic publications

As this research was firmly rooted in document analysis academic publications constituted a significant portion of the data which was collected and analysed. Academic journals were accessed electronically through the Dublin Institute of Technology database. Publications, journals and articles which could not be sourced in this way were available either through the Dublin Institute of Technology or Trinity College Dublin libraries.

Legislation

All Irish legislation is available at www.irishstatutebook.ie. This website gives the public access to Acts of the Oireachtas, Statutory Instruments and Legislation Directory. The researcher can select a particular Act to examine or a key word search can be conducted. However, it is only the printed versions of the Acts of the Oireachtas and Statutory Instruments which are deemed official.

Oireachtas debates

Oireachtas debates are available from www.oireachtas.ie. This site is updated daily. Failed Bills such as the Criminal Justice Bill 1992 can also be accessed here. The Oireachtas debates are extensive. To overcome this, a table with terms searched can be found in appendix A. This ensures the research can be repeated.

Department of Justice and Equality

The website of the Department of Justice and Equality offers information on victims of crime and provides links to publications, news updates and sites of further information. It is found at www.inis.gov.ie/en/JELR/Pages/Home. The researcher analysed discussion papers and

campaign manifestos. According to Gomm (2008) press releases can often contain material deliberately aimed at serving as quotes in the public forum. Also, political releases often contain statements which aim to invoke a sense of solidarity with the target audience (Gomm, 2008).

Reports

Of particular interest to this research were publications and reports carried out by victim support and advocacy groups such as publications by the Irish Council for Civil Liberties and the Dublin Rape Crisis Centre.

Central Statistics Office publications

Statistics, publications and databases are available at ww.cso.ie. This website also offers links to databases of other Irish public sectors and to statistical databases of International organisations such as Eurostat.

3.2 Content analysis

The research also included content analysis of messages delivered through the media. This represented a method of primary analysis. It was hoped that content analysis would offer a means of triangulation. '*Content analysis is a process of analysis which focuses on the words and/or pictures contained in documents*' (Davies *et al.*, 2011, p. 345). The aim here was to examine the social and cultural context which led to the emergence of policies and legislation concerning victims of crime. It was hoped that this method would allow for the establishment of relationships between the socio - cultural context and policies developed at the time, if any. Davies *et al.* (2011) note that the media can be an important source of information about the way in which victimisation and victim policies are communicated and developed, helping us better understand the influence of the cultural context. The media is also an important consideration for this study as it is quite often the medium through which advocacy groups articulate their world view and lobby for interests (Davies *et al.*, 2011). This type of data was accessed through the Nexis UK and the Irish Times electronic databases. A table of search terms can be found in appendix A, allowing for research to be repeated. While using Nexis UK terms were searched under all available dates. When using the Irish Times database, which has a larger archive, a five year date range, preceding each individual policy, was used.

This method was adopted so any developments in the lead up to the enactment of the policy in question, which may be perceived as influential, were included. Collection of this data was also done through internet searches of archives. The Irish Independent online archive was also used, however with limited access to the database specific dates could not be searched for. The use of these databases allowed the researcher access to archived newspaper articles published by Irish newspapers. When analysing media data it was important to keep in mind that often crimes and victimisation are sensationalised by the media. It was important, also, to consider that media data, and other documentary data, concern only those cases of victimisation which have been recorded.

3.3 Research Design

For the purpose of this study, data analysis began at the data collection stage. Scott (1990) outlined a typology for assessing the quality of documentary data; authenticity (whether it is genuine), credibility (accuracy) and representativeness and meaning (what the document intended to say). This typology was referred to throughout the data collection and analysis processes. According to Cohen, Manion and Morrison (2007) placing documents along a continuum (see figure 3.1) can help the researcher answer questions about validity and reliability. This continuum also informed the data collection and analysis.

Figure 3.1: Documents lie on several continua.

- Formal/official \longleftrightarrow Informal/lay
- Published \longleftrightarrow Unpublished
- Public domain \longleftrightarrow Private papers
- Anonymous \longleftrightarrow Authored
- Facts \longleftrightarrow Beliefs
- Professional \longleftrightarrow Lay
- For circulation \longleftrightarrow Not for circulation

Source: (Cohen *et al.*, 2007, p. 203).

A purposive sampling method was adopted to seek out the documentation required. Data preparation involved surface reading of articles to qualify the most appropriate and relevant documents. Analysis followed steps as outlined by Bowen (2009). The first step was skimming or surface reading of the document. This was used to assess the quality and suitability of the information. Next was reading – a more thorough examination. The final step of the analysis was interpretation. This was conducted with reference to those essential considerations for document analysis as described by Scott (1990). The aim was to develop a form of thematic analysis to look for patterns and categories to develop explanations. As per Franzosi (2004) thematic analysis is a type of coding scheme which is based on designing categories encapsulating the strongest and most common themes. According to Bowen (2009), thematic review is a process which involves a more focused and meticulous review of the data. The thematic analysis will reflect the themes presented in the literature review.

3.4 Ethical Issues

As with all research confidentiality is vital. Under the methods adopted in this study information was freely available in the public domain. As a result, access was not an issue. Taking this type of qualitative approach means there were no personal research subjects. Nevertheless, fairness was at the forefront when analysing data. Consideration was given to any possible opposition to interpretations and whether organisations mentioned should be presented with the analysis. Also, the researcher ensured that any quotations or paraphrasing were entirely accurate in order to maintain the integrity of the study. It was also the responsibility of the researcher to ensure that there has been no fabrication of evidence or results. As per Le Voi (2002) it should be possible to carry out any piece of academic research again by another researcher in order to test the reliability of results. By ensuring honesty the researcher will uphold the integrity of the research and of the field. This research adhered to the ethical guidelines as provided by the Sociological Association of Ireland (Ethics Committee of the Sociological Association of Ireland).

3.5 Limitations of the research

There are a number of limitations which must be acknowledged. First, the issue of white collar crime goes beyond the scope of this study. Although this is a very topical issue it will

not be addressed in this study. Next, the retrospective nature of this research meant that there was a danger the researcher would miss vital information, or disregard vital information as unimportant. In order to counter this, three significant policies, the Criminal Law (Rape) (Amendment) Act 1990, the Criminal Justice Act 1993 and the Justice for Victims Initiative 2008, were selected to focus on. There was a risk that the collection of large amounts of data may have resulted in the focus wandering and the inclusion of unnecessary information in the study. Search tables were constructed in order to overcome this. It was imperative that the focus of the study be maintained.

The researcher tried to remain aware of the context and conditions of the production of a document (Blaxter, Hughes & Tight, 2010). Considering governmental data, it is rarely produced with the academic in mind (Gomm, 2008). Data produced by governments can be problematic as it has often been produced for internal purposes (Gomm, 2008). One potential pitfall here was that of missing data. As per Neuman (2011) governments can start and *stop* data collection for budgetary and political reasons. Also, when examining data published by the Central Statistics Office the researcher had to consider whether indicators used to measure variables had changed (Blaxter *et al.*, 2010). Finality was also an element which had to be considered in this research. Whilst an interviewee may be probed to expand on information or clarify points this is not possible when analysing a document which is unclear or lacking vital information.

Finally, the representativeness and validity of this research has been an issue. Ideally, triangulation would be used to validate findings. Whilst content analysis of media publications may offer a means of triangulation, the methods of content analysis and document analysis are not entirely distinct. Both rely on the researcher's own interpretation. Consideration was given to conducting interviews. However, it was felt that key individuals involved in the advocacy groups and governmental parties may no longer be in office rendering it difficult to carry out a sufficient number of meaningful interviews. The research used Nexis UK and the Irish Times as search engines for newspaper articles. As a result there is a huge reliance on articles from the Irish Times for content analysis. This may cause a bias as there was little representation from other broadsheets or tabloids.

Future research may extend the findings of this study by including a greater range of victim policies. Prospective researchers may also identify alternative sources of influence which went beyond the scope of this study.

3.6 Reflexivity

As this study relies heavily on the researcher's own interpretation of data, reflexivity was crucial. Mauthner and Doucet (2003) see the researcher and the processes of data collection and analysis as inextricably intertwined and interdependent. Mauthner and Doucet (2003) argue that data analysis is not simply a neutral technique carried out by an unbiased researcher. Rather, data analysis is conducted by the researcher who brings to the research their own personal presuppositions and academic influences (Mauthner & Doucet, 2003). The current research is approached from a constructionist standpoint. The researcher sees the social world as constantly evolving and changing as a result of social interactions. This viewpoint, along with the theoretical framework underpinning the research, has undoubtedly had an influence on how data is analysed and interpreted. Finally, as a woman conducting this research, it may be a concern that the researcher is over - empathetic with cases of violence against women. However, the researcher has no personal links to any of the issues discussed. Much of the information was new to the researcher.

This qualitative research adopted the methods of document analysis and content analysis in order to examine how the Irish policy process relating to victims of crime has been influenced. With the necessary information available in the public domain the research has been relatively unobtrusive. The researcher conducted the process ethically to uphold the integrity of the research. Due to the nature of the research, data analysis began at the data collection stage. As the findings are dependent on the researchers own interpretation of data, reflexivity was paramount throughout. The next chapter will now proceed to examine the results of the research findings.

4. RESULTS

This chapter looks at the circumstances surrounding three policies, the Criminal Law (Rape) (Amendment) Act 1990, the Criminal Justice Act 1993 and the Justice for Victims Initiative 2008. Qualitative data analysis has been used to discover the socio - cultural context surrounding the introduction of these policies. The findings have also been analysed to discover the influences on policies for victims of crime in Ireland.

4.1 Criminal Law (Rape) (Amendment) Act 1990

The Criminal Law (Rape) (Amendment) Act 1990 revised the provisions of the Criminal Law (Rape) Act 1981. Enacted on December 18th 1990, the Act included a number of significant new provisions. Section two offered a comprehensive new definition of sexual assault.

‘The offence of indecent assault upon any male person and the offence of indecent assault upon any female person shall be known as sexual assault’ (Criminal Law (Rape) (Amendment) Act, Section 2 (1)).

The 1981 Act did not explicitly define sexual assault but used the term *‘indecent assault of a female’* (Criminal Law (Rape) Act 1981, Section 10). The 1990 Act also included a definition of aggravated sexual assault which had been absent from the 1981 Act. Aggravated sexual assault now meant –

‘a sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted’ (Criminal Law (Rape) (Amendment) Act 1990, Section 3 (1)).

Section four of the 1990 Act detailed the meaning of rape, which had changed significantly. The Criminal Law (Rape) Act 1981 stated that-

‘A man commits rape if-

- (a) he has unlawful sexual intercourse with a woman who at the time of intercourse does not consent to it, and*
- (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it’* (Criminal Law (Rape) Act 1981, Section 2(1)).

Under the Criminal Law (Rape) (Amendment) Act 1990 rape was any sexual assault including-

‘(a) penetration (however slight) of the anus or mouth by the penis, or

(b) penetration (however slight) of the vagina by any object held or manipulated by another person’ (Criminal Law (Rape) (Amendment) Act 1990, Section 4 (1)).

Significantly the word ‘woman’ was replaced by the word ‘person’. Section five of the 1990 Act removed the marital exemption in relation to rape stating that *‘any rule of law by virtue of which a husband cannot be guilty of the rape of his wife is hereby abolished’*. Whilst campaigning to repeal the 1981 Act, the Dublin Rape Crisis Centre stated that the majority of rapes probably occur within marriage (McKay, 2005, p. 106). At the time of enactment, Minister for Justice Ray Burke said that husbands guilty of rape would feel the full severity of the law (McKay, 2005, p. 156). The assumption that boys under the age of 14 were incapable of rape was repealed under section six. Under section seven of the 1990 Act the provision that judges give a corroboration warning in sexual cases was replaced by a judicial discretion to give a warning. A corroboration warning is where the judge warns the jury of convicting a defendant on the basis of unconfirmed evidence from the victim. Taken together these Acts may be cited as the Criminal Law (Rape) Acts 1981 and 1990.

The 1990 Act first originated as the Criminal Law (Rape) (Amendment) Bill in December 1988. This came about after Fianna Fáil requested the Law Reform Commission formulate proposals for the reform of legislation regarding rape and sexual assaults. The proposal for reform had made its first appearance in Fianna Fáil’s 1987 *Programme for Recovery*. On the 6th March 1987 the Attorney General formalised this request to the Law Reform Commission (Law Reform Commission, 1988). The Law Reform Commission presented their findings in *Rape and Allied Offences*. This Consultation Paper was followed by a daylong seminar facilitating discussion of the issues posed by the paper. This seminar was held on the 30th January 1988 (Law Reform Commission, 1988). Interviews were also carried out with four complainants of sexual assault (Law Reform Commission, 1988). The researcher notes that Law Reform Commission thanked the Dublin Rape Crisis Centre for organising these interviews (Law Reform Commission, 1988). In December 1988, Nuala Fennell, a member of Fine Gael, brought it to the attention of the Seanad that the provisions of the Criminal Law (Rape) (Amendment) Bill 1988 were first proposed by the Rape Crisis Centre approximately

five years before the drafting of the Bill (Seanad Éireann, 1988, Vol. 121 No. 13, para. 36). Mrs. Fennell also drew attention to the lack of funding for the Rape Crisis Centre stating that whilst the Bill had brought with it '*fine words*' and '*worthy statements*' there had been no commitment of funding by the Government to secure the future of the organisation (Seanad Éireann, 1988, Vol. 121 No. 13, para. 41). In January 1990 Mr. Pat Mc Cartan, of the Workers Party, addressed the Government with disgust at the way this Bill had been addressed. He said '*the ordering and taking of this Bill for debate on Second Stage has been totally unsatisfactory and entirely haphazard*' (Dáil Éireann, 1990, Vol. 394 No. 8, para. 1). The 30th of January became the sixth occasion where the Bill had been listed for second reading. It was still known as the 1988 Bill (Dáil Éireann, 1990, Vol. 394 No. 8, para. 1).

The campaign for the amendment of the 1981 Act began long before the Criminal Law (Rape) (Amendment) Bill 1988. According to McKay (2005), the Dublin Rape Crisis Centre began this campaign as soon as the 1981 Act became law on the 6th May 1981. The Rape Crisis Centre had found the 1981 Act to be inadequate and that it would '*let the government off the hook on rape*' (McKay, 2005, p. 36). Nuala Fennell described how the Rape Crisis Centre saw the 1981 Act as piecemeal legislation (Seanad Éireann, 1988, Vol. 121 No. 13, para. 36). As per McKay (2005), a former volunteer of the Dublin Rape Crisis Centre and a founding member of the Belfast Rape Crisis Centre, from 1981 every Minister for Justice was lobbied to change the 1981 Act. It was in 1986 that the campaign for change became official (McKay, 2005, p. 106). In October 1986 the Dublin Rape Crisis Centre made a submission to the Oireachtas Joint Committee on Women's Rights (McKay, 2005). This was supported by representatives from the major political parties. These representatives included Eithne Fitzgerald of the Labour Party, Progressive Democrat Mary Harney and Monica Barnes of Fianna Fáil. (Maher, 1986, October 7; McKay, 2005) At that time Kieran McGrath, a social worker, consultant and former editor of the Irish Socialist, was noted as describing the Rape Crisis Centre as an effective lobby group (McKay, 2005, p. 111).

The Criminal Law (Rape) (Amendment) Act 1990 was enacted after a period of changing attitudes. Beliefs that rape within marriage did not exist and that teenage boys were incapable of rape began to falter. McKay (2005) noted an emergent Irish society which had a growing awareness of sexual abuse. McKay (2005) described an explosion in the number of clients coming to the Dublin Rape Crisis Centre. In 1986, the Irish Times reported that the number of calls received by the Dublin Rape Crisis Centre had risen by almost 100% on the previous year (Irish Times, 1986, January 10, p. 14). By 1986, men had begun attending the Dublin

Rape Crisis Centre along with people who had been raped as children and in institutions (McKay, 2005). Rape and sexual assault became an important issue discussed by the public and the media (Hegarty, 1988, January 19). One particular case happened shortly after the official launch of the Dublin Rape Crisis Centre campaign. In Cavan town, a man broke into a woman's home and raped, buggered and indecently assaulted her (McKay, 2005, p. 113). Despite an initial confession and forensic evidence, the man was acquitted in May 1987 (McKay, 2005, p. 113). Media coverage of this case raised public awareness about the obstacles facing Irish women in the criminal justice system (see figure 4.1 appendix B) (McKay, 2005, p. 114). According to Susan McKay (2005, p. 114), the Irish Times, commenting on the Cavan case, backed the submissions by the Dublin Rape Crisis Centre. According to Nuala Fennell, as well as serving victims of rape, the Dublin Rape Crisis Centre had worked tirelessly to not only educate public opinion but to lobby the Government for change (Seanad Éireann, 1988, Vol.121 No. 13, para. 24).

4.2 Criminal Justice Act 1993

On April 3rd 1993 the Criminal Justice Act passed into legislation. This Act may be seen as watershed legislation for victims of crime and had three main objectives. First, it introduced a provision for appeals against unduly lenient sentences. Under the provisions of this Act the victim had the right to petition the Director of Public Prosecutions to have sentences reviewed by the Court of Criminal Appeal. However, this decision was ultimately up to the Director of Public Prosecutions. Section five of the Criminal Justice Act 1993 established victim impact statements in the criminal justice system for the first time. These were limited to sexual or violent offences or offences involving the threat of violence. According to McGovern (2002) the purpose of the victim impact statement is to give a victim the chance to describe the effect the crime they suffered had on their life. McGovern stated that the significance of this provision could not be overstated (2002, p. 399). Victim Support saw the victim impact statement as crucial in ensuring a more meaningful role for the victim in the criminal justice system (McGovern, 2002, p. 399). Finally, section six laid out a statutory compensation scheme where the court orders the defendant to pay compensation to the victim.

The need for provision to appeal unduly lenient sentences was highlighted by the Lavinia Kerwick case. On July 15th 1992, William Conroy pleaded guilty to raping Lavinia Kerwick

on January 1st 1992. The case was adjourned for one year by Mr. Justice Flood. On the 21st July 1992, 700 people gathered in Kilkenny to demonstrate against violence against women and offer support to Ms. Kerwick. According to O'Neill (1992, July 22) whilst most demonstrators were local, both sexes and all ages were present. This case received huge public attention with massive outcry for change. Ms. Kerwick had not been represented in court and did not have the chance to describe how the rape had impacted on her life (McKay, 2005, p. 182). Conroy, who admitted his guilt, walked free from the court that day. This case triggered huge media coverage with members of the public using newspapers as an outlet to vent this anger. On July 24th 1992, in a letter to the editor, one person wrote that because of Ms. Kerwick's case politicians could no longer simply pay lip service to women's rights. Now it was more necessary than ever to provide funding and resources to services for victims of rape and domestic violence (Clarke, 1992, July 24). Journalist Kevin Myers (1992, October 8) wrote of his anger not only at the crime Ms. Kerwick had suffered, but also the decision of the judge to adjourn sentencing of Conroy. Ms. Kerwick informed the Irish Times that she intended to seek a meeting with the Minister for Justice, Mr. Pádraig Flynn, to discuss the decision of the judge to adjourn her case (O'Neill, 1992, July 22). This meeting prompted Mr. Flynn to introduce the Criminal Justice Bill 1992 (Cusack, 1993, March 5). On September 15th 1992 Mary Cummins, Women's Affairs Correspondent with the Irish Times, wrote that quick and dramatic action by Mr. Flynn had accelerated the legislative process. However, this Bill failed with the dissolution of the 26th Dáil in 1992.

On the 10th March 1993, the then Minister for Justice Mrs. Geoghan - Quinn spoke at the Second Stage of the Criminal Justice Bill 1993 in the Dáil. She spoke of the anxiety of the Government in passing this legislation '*as a matter of extreme urgency*' (Dáil Éireann, 1993, Vol. 427 No. 7, para. 1). Mrs. Geoghan - Quinn spoke of the similar atmospheres of massive public outcry which was common to the introduction of the 1992 Bill and the 1993 Bill (Dáil Éireann, 1993, Vol. 427 No. 7, para. 3). As the Irish Times reported in March 1993 the failed Criminal Justice Bill of 1992 received fresh impetus as a result of public outcry over the Kilkenny incest case (Cusack, 1993, March 5). There was immense public anger at this case with the Minister receiving an unprecedented number of calls from the public describing their shock and horror at this case (Cusack, 1993, March 5). The anger was directed mostly at the lenient sentencing which was common to both Lavinia Kerwick's case and the Kilkenny incest case.

Figure 4.2 (see appendix C) is the picture of Lavinia Kerwick that accompanied Paul O'Neill's article in the Irish Times. This picture came in the week after the adjournment of her case, at a time when public concerns were very raw. In the article, her suffering due to the crime inflicted on her was documented. O'Neill (1992, July 22) noted how the rape had driven her to anorexia and attempted suicide. In the article, Mrs Carolyn Dunne, for whom Ms. Kerwick baby-sat her daughters described how the rape had transformed Ms. Kerwick from a normal, healthy teenager to a very frightened young woman (O'Neill, 1992, July 22). Lavinia Kerwick waived her right to anonymity to pursue justice. Her portrayal in the media mirrors the discussion on media influence found in chapter two. This high profile case focused media attention onto a young vulnerable woman which intensified public demand for greater punitiveness (Jewkes, 2010). The media also provided a platform for Ms. Kerwick to seek out justice. Mrs. Geoghegan - Quinn was quoted in the Irish Times saying '*Lavinia Kerwick couldn't change history. But she has changed the future*' (O'Neill, 1993, July, 19, para. 7). The media directed focus on Ms. Kerwick's case also led to a wider audience for lobby groups to convey their message. There occurred a snowballing of events where members of the public and lobby groups cried out for change. The demonstration held in Kilkenny in support of Ms. Kerwick was well documented. Another example was a protest at the Four Courts on July 24th 1992 where a wide range of women's groups protested against '*the refusal of the judicial system to recognise the seriousness of the problem of sexual offences against women*' (Irish Times, City Edition, 1992, July 25, para. 1). These women had their mouths gagged with black ribbon (McKay, 2005, p. 184). A march and rally also took place in Dublin in August 1992 to highlight rape and other violence against women. The march was organised by a number of groups under the title 'Women Against Violence Against Women' (Cummins, 1992, August 6, para. 3). The media and advocacy groups pulled the attention of the Government to violence against women. The Irish people were not happy at what they saw as lenient sentences and a lack of action on the part of the Government.

In Dáil Éireann, Fine Gael TD Alan Shatter addressed Mrs. Geoghegan - Quinn's desire to speed up the passing of the Criminal Justice Bill 1993 into legislation with a cynical eye (Dáil Éireann, 1993, Vol. 427 No. 7, para. 27). Shatter questioned why a similar Bill put forward by Fine Gael, the opposition, in 1990 was rejected by the Government at the time. This rejected Bill was presented for Second Stage by Jim O' Keefe who stated that this Bill proposed to '*amend the law relating to criminal proceedings so as to provide for the review*

of sentences that are considered too lenient' (Dáil Éireann, 1990, Vol. 398 No. 4, para. 3). With similar provisions, Mr. Shatter argued had this Bill passed into law, the provisions would have been available to the Lavinia Kerwick and Kilkenny incest cases (Dáil Éireann, 1993, Vol. 427 No. 7, para. 32). Shatter also stated that had this legislation been in place *'Ministers would not have had to go through the charade of having media spotlight meetings with a number of tragic victims of sexual assault to portray a feeling of concern'* (Dáil Éireann, 1993, Vol. 427 No. 7, para. 28). Similarly, Mr. Shatter seemed to question the motives behind Mr. Flynn's introduction of the Criminal Justice Bill 1992. In the Irish Times Mr. Shatter asked how he could not be sceptical seeing as the 1992 Bill had been introduced by a Government who had never done one iota more than it had to for women's rights (Cummins, 1992, September 15). It seems Mr. Shatter was not alone in his scepticism. In 1992 Michael Cunningham of the Irish Times picked up on Mr. Flynn's apparent use of 'sound bites' during the abortion debate. He dubbed Mr. Flynn's use of language as *'Flynn speak'* (Cunningham, 1992, October 13). Years later, in her account of the situation, Susan McKay wrote that Mr. Flynn made *'sweeping promises to end violence against women'* in the aftermath of Ms. Kerwick's case (2005, p. 186).

Mr. Shatter was arguing that the Government were working under a knee-jerk method. They had rejected a relevant bill by the opposition, Fine Gael, in 1990 and introduced the 1992 and 1993 Bills as a result of public and media outcry. During this particular debate, Miss Harney of the Progressive Democrats also commented how the content of the Criminal Justice Bill 1993 amused her, considering the attitude of the Government to the 1990 Fine Gael Bill (Dáil Éireann, 1993, Vol. 427 No. 7, para. 77). Similarly, Mr. Gilmore, at that time representing the Democratic Left, stated that having reflected on the history of the Bill, he considered it to be the resulting product of the outcry following the Lavinia Kerwick case (Dáil Éireann, 1993, Vol. 427 No. 7, para. 108). Mr. Gilmore also asked if an emergency response is the best way to deal with issues such as sexual violence, rape and incest or to reform our criminal justice system (Dáil Éireann, 1993, Vol. 427 No. 7, para. 110).

4.3 Justice for Victims Initiative 2008

The 'Justice for Victims Initiative' was launched in June 2008 by the then Minister for Justice, Equality and Law Reform, Dermot Ahern. This initiative introduced a number of administrative and legislative developments. The administrative developments involved the

establishment of a Victims of Crime Office and the creation of a Victims' Consultative Forum which runs under the Commission for the Support of Victims of Crime. The legislative aspects of the initiative came into effect with the enactment of the Criminal Procedure Act 2010. One of the provisions of this Act amended the 1993 Criminal Justice Act to allow the families of murder victims to give a victim impact statement at the discretion of the court.

A month prior to the introduction of the initiative Brian Kearney had been convicted of the murder of his wife Siobhan Kearney. This case had been highly publicised in the media. The case had been tracked by media coverage for two years. Ms. Kearney's family often used the media as a means of appealing the case. For example, Downes (2006, December 9) wrote of the plea by one of her sisters for the killer of Ms. Kearney to come forward. The climax of the media attention came when Mr. Justice Barry White refused to allow the family read a victim impact statement in court. The Criminal Justice Act 1993 had only included provisions for living victims of crime. The 1993 Act afforded Ms. Kearney's family no statutory right to a victim impact statement. As a result the full text of this statement appeared in the Irish Times on March 6th 2008. This statement had been delivered after the 13-day trial to a jostling and scuffling media body, which resulted in the family having to retreat behind the gates of the courts to read their victim impact statement (Healy, 2008, March 6). This case was topical in Government as both Fianna Fáil and rival party Fine Gael were proposing policies addressing failures of Irish legislation regarding the rights of victims of crime. On March 7th 2008 Advic, an advocacy and support group for those affected by the unlawful killing of a family member, called for a compulsory allowance of victim impact statements by judges in murder trials (Hogan, 2008, March 7). McCárthaigh (2008, March 7) wrote how Advic claimed that a victim impact statement should be viewed as a right and not a privilege. Fine Gael TD Alan Shatter stated that the Victims' Rights Bill 2008 would address the difficulties highlighted by this trial (Dáil Éireann, 2008, Vol. 657 No. 3, para. 12).

The Justice for Victims Initiative could be viewed as the alternative to Fine Gael's proposed Victims' Rights Bill 2008. The initiative was announced and introduced at the time when Fine Gael's Bill was at the Second Stage. Fianna Fáil TD Pat 'The Cope' Gallagher applauded Minister Ahern's administrative and legislative changes which Mr. Gallagher argued would avoid the bureaucratic nightmare which the Fine Gael Bill (2008) would have caused (Dáil Éireann, 2008, Vol. 657 No. 4, para. 20). Mr. Seán Connick of Fianna Fáil noted

how the initiative would be based largely on the findings of the Balance in the Criminal Law Review Group (Dáil Éireann, 2008, Vol. 657 No.4, para. 51). He argued that these findings offered the best advice regarding victims of crime in Ireland. Mr. Connick also noted how in the days leading up to the debates in the Oireachtas that victim support groups had been lobbying members on both sides of the House to express their concern for victim rights (Dáil Éireann, 2008, Vol. 657 No. 4, para. 51).

The Fine Gael Victims' Rights Bill 2008, had it been passed, would have given victims of crime comprehensive statutory rights within Irish Law (Dáil Éireann, Vol. 657 No. 3, para. 2). Section five outlined the provision that all victims of crime must be treated with compassion, respect and dignity. Section seven outlined the requirement that information be provided to the victim of crime from the State and State agencies in a timely fashion, as practicably as possible. Sections 12 to 16 provided for a more comprehensive application of victim impact statements. The Bill also provided for the establishment of the Commission for the Support of Victims of Crime on statutory footing and a new updated victims charter. Mr. Charles Flanagan, a member of Fine Gael, noted how the Bill had garnered support from victim support groups such as Advic, Rape Crisis Network and the Irish Council for Civil Liberties since its publication in January 2008 (Dáil Éireann, 2008, Vol. 657 No. 3, para. 49).

The taking of the Bill at Second Stage was countered with the Fianna Fáil announcement of the Justice for Victims Initiative which was to be followed by legislation. Mr. Shatter accused Mr. Ahern of leaking a story to the Sunday Independent which outlined radical changes to legislation which were similar to some provisions in the Fine Gael Bill (Dáil Éireann, 2008, Vol. 657 No. 3, para. 24). Mr. Shatter argued that Mr. Ahern made a rushed last-minute announcement of the creation of a victim of crime consultative forum, insinuating a knee-jerk reaction by the Government (Dáil Éireann, 2008, Vol. 657 No. 3, para. 32). It was reported in the Irish Times that the Dáil was suspended three times as Mr. Ahern gave a press conference introducing pre-emptive victims' rights legislation (O'Halloran, 2008, June 20). This occurred when the Dáil was meeting to renew anti-terrorism legislation. O'Halloran (2008, June 20) wrote how Labour TD Pat Rabbitte felt that the Dáil had been deliberately misled and Alan Shatter said that Mr. Ahern's actions were a political mockery making fools of Dáil members. Mr. Shatter also stated Mr. Ahern had accused the Fine Gael Bill of plagiarising a similar New Zealand Act (Dáil Éireann, 2008, Vol. 657 No. 3, para. 35). In response, Mr. Ahern stated that many of the provisions outlined in the Victims' Rights Bill did not need legislation. He stated that his initiative would ensure that – through the work of State

agencies – victims would be provided with the necessary access to services (Dáil Éireann, 2008, Vol. 657 No. 3, para. 107).

Minister Ahern's initiative came from the recommendations of the Balance in the Criminal Law Review Group. The group drew attention to the limited scope of the offences covered under the Criminal Justice Act 1993 and the limited definition of a victim. It must be noted that this group was formed by the Fianna Fáil Government. According to Bacik *et al.* (2007), the trend to rebalance the criminal justice system had been controversial, receiving criticism from many groups including the criminal bar. This was largely down to the speed at which legislation was changed (Bacik *et al.*, 2007, p. 36). The composition of the Review Group had been criticised by the Irish Council for Civil Liberties for a lack of criminal practitioners (Irish Council for Civil Liberties, 2008). The introduction of the initiative may be seen, not only as a substitute for the Victims' Rights Bill 2008, but as a way of responding to the media attention of the Kearney case. The way in which the news of the initiative was delivered to the public and the following debates in the Dáil ensured that the media attention was anchored and that the Government appeared to be responding to the failures of legislation regarding the Kearney trial.

In 2002, prior to the Justice for Victims Initiative, Lillian McGovern wrote of huge deficiencies in basic information and the progress of cases provided to victims and their families within the criminal process. McGovern noted how victims frequently had distressing encounters in the courtroom, often having to sit facing the accused or failing to find seats (2002, p. 397). There was a failure in the provision of basic service rights. In 2010, Kilcommmins, Leane, Donson, Fennell and Kingston found that information provided to victims of crime took a fragmented nature. A central finding within their research was a lack of information for victims regarding how the criminal justice system works and the rights of the victim within the system (Kilcommmins *et al.*, 2010, p. 166). Those service rights which Mr. Ahern stated did not need legislation do not appear to have been enforced under the administrative elements of the Justice for Victims Initiative.

This chapter set out to articulate the findings of the research using the Criminal Law (Rape) (Amendment) Act 1990, the Criminal Justice Act 1993 and the Justice for Victims Initiative 2008 as a lens. The findings indicate that there are a number of broad themes of influence on the development of victim policies in Ireland. By examining the socio - cultural context

surrounding the emergence of each of the three policies discussed, the researcher has identified three dominant themes. These are the role of the media, the influence of advocacy and support groups and the Government. The following, and final chapter offers reflections and a discussion of these themes.

5. DISCUSSION

This chapter builds on the findings and analysis to categorise themes of influence which have emerged from the research. Three common themes can be found on the analysis of the three policies. The media, advocacy groups and Government ideologies can all be seen to have had an influence on the victim policy - making process in Ireland.

5.1 The media

The influence of the media on victim policy - making can be seen throughout the three policies studied. Whilst campaigning for the repeal of the Criminal Law (Rape) Act 1981, the Dublin Rape Crisis Centre used the media as a way to get their messages across on a wider scale. Controversial statements ensured coverage. Rallies and protests, where participants had their mouths gagged, guaranteed dramatic photographs. The Dublin Rape Crisis Centre utilised the media to get the public talking about rape and violence against women and to put pressure on the Government. The case of Lavinia Kerwick was also played out in the newspapers. This appeared to focus the Government's attention on righting the 'wrongs' of this case. The platforms which the media provided for victims to voice their opinions appeared to be significant in the formation of new victims' policies. The case of Lavinia Kerwick can be seen to have had a direct impact on the actions of the Government, leading to the drafting of the Criminal Justice Act 1993. Ms. Kerwick met with the then Minister for Justice in 1992 and her case sparked much debate in the Oireachtas. The Siobhan Kearney case also unfurled under media focus. The climax came when the family, unable to deliver the victim impact statement in court, delivered their statement to the mass media congregated outside the court. The impact of the Kearney case may not have been as direct as the Kerwick case, but, it was still only a month after the case concluded that Mr. Ahern announced the Justice for Victims Initiative.

5.2 Advocacy groups

Advocacy groups have been pivotal in all three of the policies discussed. The Criminal Law (Rape) (Amendment) Act 1990 came after a long period of lobbying by advocacy groups. The Irish Council for Civil Liberties and the Rape Crisis Network set much of legislative

agenda for women's rights in Ireland (O'Brien, 2006). In 1986, the Dublin Rape Crisis Centre launched the official campaign to reform the Criminal Law (Rape) Act 1981. Prior to this, every Minister for Justice had been lobbied for change (McKay, 2005). Ultimately, it was an almost decade - long battle, fronted by the Dublin Rape Crisis Centre, which brought about the Criminal Law (Rape) (Amendment) Act 1990. There was much lobbying and demonstrations as a result of the Lavinia Kerwick case also. A demonstration was held in support of Ms. Kerwick in Kilkenny in 1992. This was followed by a demonstration at the Four Courts and a rally by 'Women Against Violence Against Women'. These groups demanded the attention of the Government be directed at violence against women. In the aftermath of the trial of Brian Kearney, Advic demanded that changes be made to the law regarding victim impact statements. When the Victims' Rights Bill 2008 was being debated alongside the introduction of the Justice for Victims Initiative victim advocate groups were lobbying all members of the Oireachtas to debate the legislation and express their concerns (Dáil Éireann debate, Vol. 657 No.4, para. 51).

5.3 The Government

Each of the three policies discussed has been adopted by a Fianna Fáil led Government. As this party has held power the most during the time span of this research, this is unsurprising. It may be said that each of the policies were enacted in a similar way. Each occurred as a result of a public outcry surrounding a particular case, a flurry of media attention and lobbying by advocacy groups. Each policy seemed to be characterised by its reactionary nature. Each of these policies were also characterised by delays. The Criminal Law (Rape) (Amendment) Act 1990 took two years to pass from Bill to Act. The Criminal Justice Bill 1992 fell with the dissolution of the Government. Legislative elements of the Justice for Victims Initiative followed two years after the administrative elements.

The policies analysed relied on the Governments own research as a foundation. The amendment of the Criminal Law (Rape) Act 1981 first appeared in 1987 in Fianna Fáil's own *Programme for Recovery*. This was followed by a 1988 publication by the Law Reform Commission at the request of the Government. This introduced the provisions of the Criminal Law (Rape) (Amendment) Act 1990. However, when the policy was being discussed in the Seanad, Nuala Fennell pointed out that the Rape Crisis Centre had submitted the provisions of it to Government in 1986. Another example is the Balance in the Criminal Law Review

Group which was formed by Fianna Fáil in 2007 in order to ‘rebalance’ the criminal justice system. The findings of this group led to the formation of the Justice for Victims Initiative. At the same time, the opposition party, Fine Gael had been researching international legislation to draft the Victims’ Rights Bill 2008. This Bill fell at the Second Stage. Although there was some overlap between the Fianna Fáil and Fine Gael policies, Fianna Fáil remained steadfast with its own government devised research. This suggests political game playing. It seems the Government wanted to take the credit for their ‘pioneering’ initiatives. The failed Fine Gael Victims’ Rights Bill 2008 was drafted considering existing international legislation. It represented, at that time, a duly considered piece of draft legislation concerning the needs and rights of Irish victims of crime. The current Minister for Justice, Alan Shatter, who drafted this legislation, has been a key figure throughout the findings of this research. His enduring debates and submissions to the Government have signalled him as having authentic desires to improve the situation of Irish victims of crime, without simply adopting reactionary measures.

It has to be noted that for every victim policy there must be a catalyst. Each of the three policies discussed offers the future policy-maker lessons. Victim policy - making must move away from reactionary political game play to more reflective and considered actions. Without comprehensive research on the efficacy of victim policies in Ireland, it can often take a major incident such as the Lavinia Kerwick case to highlight the deficiencies in the criminal justice system. This research has offered some findings but there is massive scope for further extensive research. It is important for the Government to work in conjunction with victim advocacy and support groups who are the mouth pieces for victims of crime in Ireland. Less than two years into this Fine Gael - Labour Government, it is hopeful that Minister Shatter will further consider the position of victims of crime in Ireland, the efforts of victim support groups and the lessons of victim policy - making which have gone before him.

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Legislation

Bunreacht na hÉireann

Criminal Justice Act 1993

Criminal Law (Rape) Act 1981

Criminal Law (Rape) (Amendment) Act 1990

Criminal Procedure Act 2010

European Convention on Human Rights

APPENDIX A

Content Analysis

Nexis UK and Irish Times database search

Policy	Search Terms	Dates Searched*
Criminal Law (Rape) (Amendment) Act 1990	<ul style="list-style-type: none"> • ‘Reclaim the night’ • Circuit Court; rape • ‘Criminal Law (Rape) (Amendment) Act’ 	<ul style="list-style-type: none"> • 01/01/1975 – 31/12/1979 • 01/01/1986 – 31/12/1990
Criminal Justice Act 1993	<ul style="list-style-type: none"> • ‘Lavinia Kerwick’ • Demonstrations; protests; rape (Nexis UK only) • ‘Kilkenny incest’ 	<ul style="list-style-type: none"> • 01/01/1990 – 31/12/1994 • 01/01/1990 – 31/12/1994
Justice for Victims Initiative	<ul style="list-style-type: none"> • ‘Siobhan Kearney’ • ‘Siobhan Kearney’ ‘Impact statement’ (Nexis UK only) • ‘Justice for Victims Initiative’ 	<ul style="list-style-type: none"> • 01/01/2004 – 31/12/2008 • 01/01/2008 – 31/12/2008

*Dates searched apply to Irish Times searches only. Nexis UK searched Irish publications for all available dates

*Irish Independent On-line archive***

Policy	Search Terms
Justice for Victims Initiative	<ul style="list-style-type: none"> • ‘Siobhan Kearney’ ‘Impact statement’

** Less access to this database meant that the researcher could not search specific dates

Oireachtas Searches

House	Year	Policy related to	Search Terms
<ul style="list-style-type: none"> • Dáil • Dáil • Seanad 	<ul style="list-style-type: none"> • 1978 • 1988 – 1990 • 1988-1990 	Criminal Law (Rape) (Amendment) Act 1990	<ul style="list-style-type: none"> • ‘Rape’ • ‘Criminal Law (Rape) (Amendment) Bill 1988’ • ‘Criminal Law (Rape) (Amendment) Bill 1988’
<ul style="list-style-type: none"> • Dáil 	<ul style="list-style-type: none"> • 1993 	Criminal Justice Act 1993	<ul style="list-style-type: none"> • ‘Lavinia Kerwick’
<ul style="list-style-type: none"> • Dáil • Dáil 	<ul style="list-style-type: none"> • 2008 • 2008 	Justice for Victims Initiative	<ul style="list-style-type: none"> • ‘Siobhan Kearney’ • ‘Justice For Victims Initiative’

APPENDIX B

Figure 4.1 Irish Times coverage of Cavan Rape Trial 1987

Date	Headline	Page No.
Tuesday 26 th May 1987	<i>Woman tells of two-hour rape ordeal</i>	10
Wednesday 27 th May 1987	<i>Man admitted rape to Gardaí, court is told</i>	4
Thursday 28 th May 1987	<i>Rape case acquittal</i>	1
Thursday 28 th May 1987	<i>Man found not guilty of raping deserted wife</i>	12
Friday 29 th May 1987	<i>DPP expected to order rape case investigation</i>	1
Friday 29 th May 1987	<i>PROSECUTION CASE</i>	11
Saturday 30 th May 1987	<i>Inquiries into prosecution of rape case underway</i>	1
Saturday 30 th May 1987	<i>A woman living in fear behind locked doors</i>	2

Source: The Irish Times database. Retrieved from <http://0-www.irishtimes.com.ditlib.dit.ie/search/archive.html?rm=listresults&filter=dateasc&keywords=Cavan+rape&daterange=custom&day1=1&mon1=5&year1=1987&day2=31&mon2=5&year2=1987> [Accessed 05 September 2012].

APPENDIX C

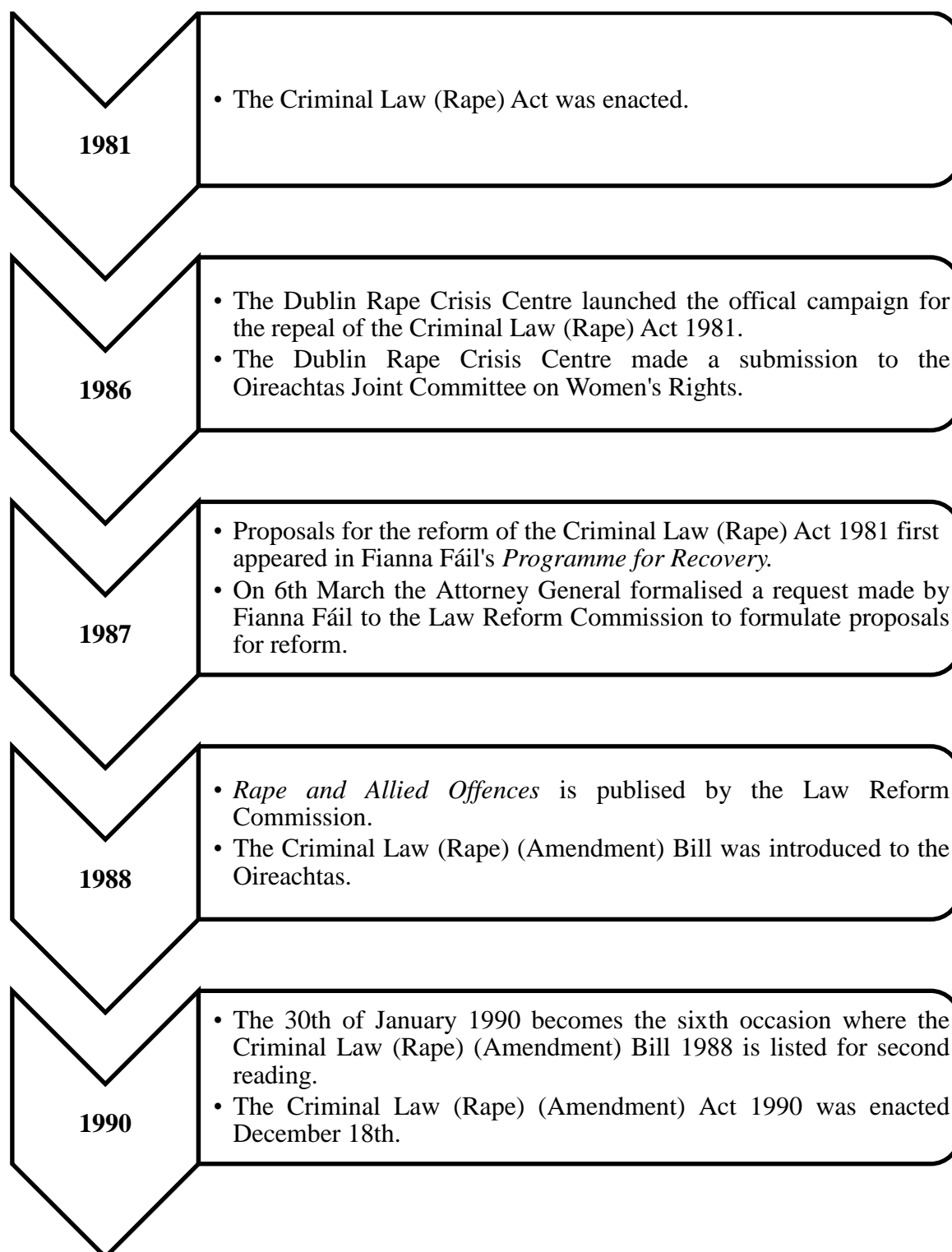
Figure 4.2 Lavinia Kerwick



Source: The Irish Times Wednesday July 22 1992 p. 5

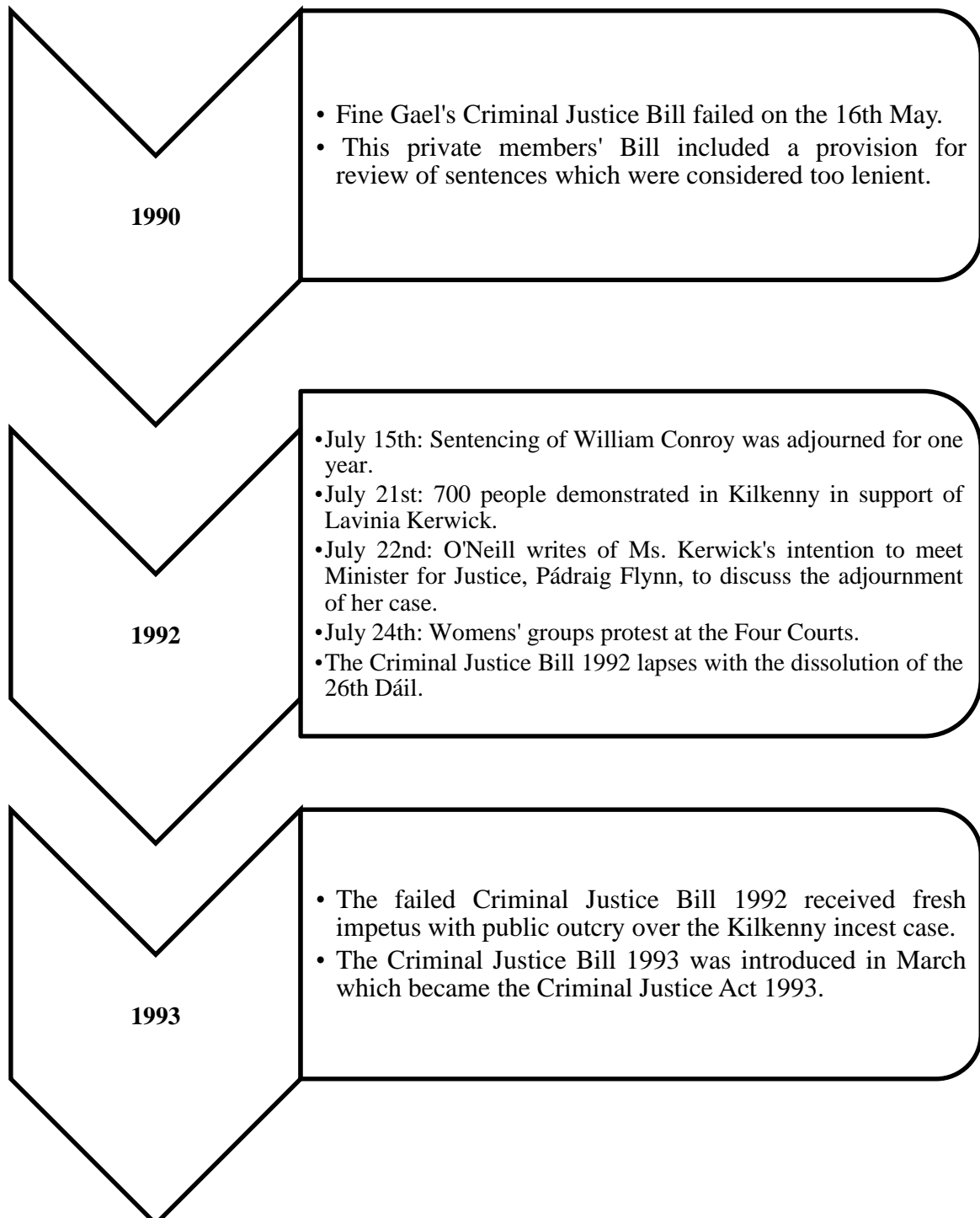
APPENDIX D

Timeline: Criminal Law (Rape) (Amendment) Act 1990



APPENDIX E

Timeline: Criminal Justice Act 1993



APPENDIX F

Timeline: Justice for Victims Initiative 2008

